

REMARKS

In view of the above amendments and the following remarks, the Examiner is respectfully requested to withdraw the rejections and allow Claims 11-22, the only claims pending and currently under examination in this application.

Claims 11 and 15 have been amended to recite that the reflectance data is collected over a period of time ranging from a time prior to introduction of a test strip into the optical meter to a time after application of the fluid sample to the sample application location. Support for these amendments can be found throughout the specification and the originally filed claims, e.g., at page 5, lines 9-26; page 13 line 7 through page 14, line 7 as well as Figure 6E. Claims 11 and 15 have also been amended to further clarify the claimed invention such that "said test strip is" has been added before the recitation of "present in said meter". Claims 19-22 have been added as new. Support for newly added claims can be found throughout the specification and the originally filed claims, e.g., at page 13 line 7 through page 14, line 7 as well as Figure 6E. Claims 19-22 have been added as new.

As no new matter has been added by the above amendments, the Applicants respectfully request the entry thereof.

Rejection under 35 U.S.C. §102(e)

Claims 11, 12 and 14 have been rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,084,660 issued to Shartle (hereinafter referred to as "Shartle"). The Examiner contends that Shartle discloses an automated meter useful in testing for the presence of a sufficient amount of sample on a test strip. The meter of Shartle, the examiner asserts, comprises the elements of Claims 11, 12 and 14.

Claim 11, and claims 12 and 14 by virtue of their dependency from Claim 11, have been amended to recite that the means for collecting reflectance data from a region of the meter occupied by a sample application location of the test strip when a test strip is present in the meter is means configured to collect such reflectance data over a period of time ranging from a time prior to introduction of the test strip into the optical meter to a time after application of the sample to the sample application location. In other words, the claimed meter obtains reflectance data prior to insertion of a test strip into a meter.

However, the Applicants respectfully submit that nowhere in the Shartle reference is it taught that reflectance data is obtained prior to introducing a test strip into a meter, where such is taught in Claims 11, 12 and 14. At best, Shartle teaches that diffusely reflected light may be measured from the sample present in the sample port, prior to admitting the sample into channel 16 (see for example col. 6, line 54 through col. 7, line 19 and Figure 5). In other words, Shartle teaches that a measurement may be obtained after application of the sample to the test strip.

Accordingly, Shartle does not teach a meter having means for obtaining reflectance data for a period of time ranging from a time prior to introduction of the test strip into the optical meter to a time after application of the sample to the sample application location of the test strip.

As such, for at least the reasons described above, Shartle cannot anticipate Claims 11, 12 and 14. Moreover, for reasons analogous to those described above, the Applicant respectfully submits that Shartle cannot anticipate Claims 19-22. Accordingly, the Applicants respectfully request that this rejection be withdrawn.

Rejection under 35 U.S.C. §103(a)

Claims 11-18 have been rejected under 35 U.S.C. §103(a) as obvious over Shartle. The Examiner asserts that Shartle teaches all of the claimed elements except Shartle does not teach any particular wavelength to use in irradiating the test strip. The Examiner states that such is provided by U.S. Patent No. 5,674,699 issued to Saunders et al. (hereinafter referred to as "Saunders"). The Examiner contends that it would have been obvious to one of skill in the art in view of Saunders to use a wavelength suitable for reflecting light from the particular sample being deposited on the test strip in conducting the method of Shartle.

The Applicants respectfully submit that the cited references, either alone or in combination, fail to teach or suggest all of the claim limitations. As described above, Shartle fails to teach or even suggest a meter that obtains reflectance data for a period of time ranging from a time prior to introduction of a test strip in the meter to a time after application of the fluid sample to the sample application location.

As Saunders is cited solely for its teaching relating to the determination of the particular wavelength at which a particular assay should be conducted to maximize results, Saunders fails to make up for the deficiencies of Shartle.

Accordingly, for at least the reasons described above, the cited combination of references fails to render Claim 11-18 obvious. Moreover, for reasons analogous to those described above, the Applicant

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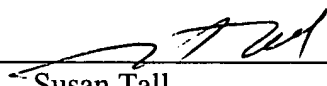
respectfully submits the cited combination of references fails to render Claim 19-22 obvious. As such,
the Applicants respectfully request that this rejection be withdrawn.

CONCLUSION

In view of the above amendments and remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issuance. The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, Order No. LIFE009/LFS76.

Respectfully submitted,
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